Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 217 of 2003

U.P.S.R.T.C. … **Appellant.**

Versus

1. Smt. Chandrawati Devi, W/o Late Anand Ballabh Joshi,
2. Km. Rashmi Joshi,
3. Km. Sangeeta Joshi, daughters of Late Sri Anand Ballabh Joshi.
4. Ashok Joshi, S/O late Anand Ballabh Joshi,
   All residents of village & P.O. Bharkatiya, Tahsil and District Pithoragarh.
5. Daan Singh Dasaila, R/o Rugari Post Rugari Patti Devraripant, Tahsil Gangolihat, District Pithoragarh.
6. United Insurance Co. Ltd. Through Divisional Manager, Divisional Office Haldwani.

… **Respondents.**

Sri A.N.Sharma, Advocate, learned counsel for the appellant.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Date December 13, 2004.

(Per Hon'ble B.S. Verma, J.)

This appeal, under Section 173 of the Motor Vehicles Act, 1988 (***for short the Act)*** is directed against the judgment and award, dated 22-5-2003, passed by the Motor Accident Claims Tribunal/District Judge, Pithoragarh (***in short the Tribunal)*** in Claim Petition No. 48 of 1998,whereby compensation of Rs. 3,74,500/- and Rs. 1,60,500/- has been awarded against the appellant and National Insurance Company respectively. Aggrieved, the U.P.S.R.T.C. has come up in appeal.

Anand Ballabh Joshi, aged 47 years and employed as Village Development Officer, lost his life as a result of grievous injuries sustained in a motor vehicle accident on 27-1-1998 at about 7-30 a.m. According to the claimants, the deceased was traveling by UPSRTC bus No. 02A-4075 and there was head-on collision between the said bus and KMOU bus No. UGP-4733 1 Km. Away from village Chamdungara towards Panar, P.S. Berinag, Pithoragarh due to rash and negligent driving of its drivers, thereby U.P.S.R.T.C. bus fell into a ravine. Deceased was brought to District Hospital, Pithoragarh. He was later-on shifted to Lucknow hospital for treatment, where he succumbed to his injuries on 4-2-1998. Hence claim petition was filed by his dependents/legal heirs for compensation of Rs. 11,35,000/-.

Appellant in its written statement asserted that its bus was being driven carefully at a show speed by the bus driver and at the scene of accident, the K.M.O.U. bus being driven rashly and negligently and coming from wrong direction collided with roadways bus. It was pleaded that on compassionate ground amount of Rs. 65,000/- was paid to the claimants.

Owner of the K.M.O.U. bus contended in his written statement that his bus was halting at the scene of accident when the U.P.S.R.T.C. bus driven rashly and negligently by its driver collided with his bus; that the report of the accident was lodged by the driver of K.M.O.U. bus and that the bus was duly insured with National Insurance Company.

Insurer of the K.M.O.U. bus also filed written statement alleging therein that the accident occurred due to sole negligence on the part of the river of the Roadways bus and that the owner was required to prove validity of relevant documents including the driving licence possessed in respect of the vehicle. Amount of compensation claimed was also questioned.

Learned Tribunal framed relevant issues in the case. On Issue No.1 relating to rash and negligence driving, it held that the accident occurred due to contributory negligence to the extent of 70% of the driver of Roadways bus and 30% of the driver of K.M.O.U. bus. It further held that Insurance Company failed to prove violation of policy condition. Ultimately, compensation of Rs. 5,35,000/- along with interest@ 9% per annum was awarded fastening liability to pay amount of Rs.3,74,500/- on the appellant and Rs. 1,60,500/- on the insurer of K.M.O.U. bus.

In support of appeal, it was contended on behalf of the appellant that there was no negligence or rashness on the part of the driver of U.P.S.R.T.C. bus; that the finding of 70% contributory negligence on the part of the appellant was not based on the evidence and that quantum of compensation awarded was exorbitant.

So far as finding on the point of negligence is concerned, the F.I.R. of the accident was lodged by Mangal Singh, driver of the K.M.O.U. bus, wherein it was mentioned that accident took place due to rash and negligent driving by the driver of the Roadways bus No. UP 02A-4075 and after collision, the said bus drier jumped from the bus with the result the bus belonging to appellant fell into a ravine. Moreover, the claimants filed certified copy of judgment dated 31-3-2001 passed in Claim Petition No. 55 of 1998, which pertains to the same motor accident, to show that there was verdict of the Tribunal that the accident occurred due to contributory negligence of both the drivers of Roadways and K.M.O.U. buses to the extent of 70% and 30% respectively. Learned counsel for the appellant could not indicate whether any appeal was preferred against the said judgment and order or that the finding on the point was set aside in appeal. Moreover, a close scrutiny of the testimony of D.W.1, Durga Singh, driver of Roadways bus, shows that he nowhere stated that he remained inside the bus after collision or that he sustained any injury due to fall of the roadways bus. He could not even dare say that F.I.R. was falsely lodged against him.

There is nothing to indicate the innocence of the roadways driver. In our view, the finding of the learned Tribunal does not require interference by this Court.

The only point for consideration now remains on the point of quantum of compensation. The claimants filed salary certificate (63-C) of the deceased, which revealed the total salary of Rs. 6,015/ per month, drawn by the deceased. Veracity of this document was not disputed by the appellant. P.W.1, Chandrawati, widow of the deceased, stated that her husband used to give Rs. 4,500/- per month for family expenses; that Rs. 50,000/- were spent on the medical treatment of the deceased and that Rs. 10,000/- were spent towards funeral expenses. The Tribunal, on the basis of salary certificate, assessed loss of dependency after deducting 1/3rd towards personal expenses, i.e. Rs. 4,000/- p.m., thereby Rs. 48,000/- per annum. Deceased was aged 47 years. The Tribunal applied multiplier of 11 for determining the loss of dependency, though as per Second Schedule of Section 163-A of the Act, multiplier of 13 was applicable in such a case. This shows that multiplier of 11 was applied in a rational manner. We are of the considered view that quantum of compensation of Rs. 5,35,000/- was just and proper.

For the reasons aforementioned, the appeal has no force and is liable to be dismissed.

The appeal is dismissed. The judgment and award, dated 22-5-2003 is affirmed. No order as to costs.

The amount is deposit with this Court be remitted to the Motor Accident Claims Tribunal Udham Singh Nagar, for being paid to the claimants.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

Date December 13, 2004.

RCP